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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 446 (VSB)

5 ANDREW FRANZONE,

6 Defendant.

Conference

7
8
9 New York, N.Y.
January 10, 2024
12:00 p.m.

10
11 Before:

12 HON. VERNON S. BRODERICK,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: KIERSTEN FLETCHER

Assistant United States Attorney

18 BENJAMIN SILVERMAN

19 DEBORAH COLSON

-and-

20 MAX NICHOLAS

Attorneys for Defendant

21 Also Present: Christopher O'rourke, U.S. Postal Inspector

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1 (Case called; appearances noted)

2 THE COURT: Good afternoon, everyone.

3 This matter is on for a status conference. I
4 understand there are several things. First, I acknowledge that
5 I received, last week, a letter from Mr. Silverman with several
6 attachments. The letter's dated January 5, related to some of
7 the questions I had posed during a conference on September 26.

8 Thank you for that, Mr. Silverman.

9 Let me ask first, with regard to that, was the
10 government intending on responding, or no?

11 MS. FLETCHER: Your Honor, I think the government is
12 happy to respond if your Honor would appreciate a response, but
13 in the absence of that, we did not intend to respond.

14 THE COURT: Okay. The other issue is, I understand --
15 Ms. Colson, Mr. Silverman -- is that some time ago I think
16 there was an indication that Mr. Franzone was going to seek out
17 new counsel, retain counsel.

18 My understanding from the communications is that -- am
19 I correct, that that was unsuccessful?

20 MS. COLSON: Your Honor, you're correct that it's been
21 unsuccessful to date, and whether he's able to do that at some
22 point in the future remains uncertain.

23 THE COURT: Okay. I should mention that I did ask my
24 deputy clerk to arrange for Mr. Nicholas, who is the CJA
25 counsel on duty who is seated in the gallery, to be here.

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1 My understanding, however, is that Mr. Nicholas would
2 not be available to try the case in June, so I have the
3 following proposal, because any counsel -- to the extent I
4 appoint CJA counsel -- any counsel to come in, I would expect
5 to be ready to try the case in June in light of the fact that
6 the case is a 2021 case, and it's been pending for a while.

7 What I would propose is the following, and Ms. Colson
8 -- and I don't remember, but did I receive from you or
9 Mr. Silverman sort of an explanation of where things stand in
10 terms of your relationship with Mr. Franzone?

11 MS. COLSON: No, your Honor.

12 But with the Court's permission, we could address the
13 Court *ex parte* today.

14 THE COURT: That's exactly what I was going to
15 suggest, that in the next week, two weeks -- what do you think?

16 In the meantime, what I would ask Mr. Nicholas to do
17 is to speak to Mr. Franzone to the extent that any issues
18 related to the representation could be something that
19 Mr. Nicholas could assist with in an advisory capacity.

20 Obviously, Mr. Nicholas, for that limited purpose I
21 would appoint you counsel so you can speak with Mr. Franzone,
22 but Mr. Nicholas, at one point -- and I'm not relieving you
23 yet, Ms. Colson, you and Mr. Silverman, until I find a counsel
24 who is going to be able to try the case and I get whatever
25 submission you're going to make with regard to the *ex parte*

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1 submission that we discussed.

2 MS. COLSON: Okay. We can file something in writing.
3 We are also prepared to address the Court orally *ex parte*
4 today.

5 THE COURT: Okay. I would prefer -- I'm just thinking
6 whether that would just be a sidebar or what that would be.
7 You know, I think I would prefer to get something in writing.

8 MS. COLSON: Okay.

9 THE COURT: And obviously, as I mentioned, it should
10 be *ex parte*, and it will be filed under seal in the case.

11 And then in the interim, Mr. Nicholas, again, can
12 speak with Mr. Franzone, but -- so how much time do you think,
13 Ms. Colson, would you like to prepare something to send to me?

14 MS. COLSON: I think we can do that by Monday.

15 THE COURT: Okay. All right. So why don't -- and
16 Mr. Nicholas, let me ask: What is your schedule?

17 Mr. Franzone, I believe is not -- am I correct; he's
18 not living in New York?

19 MS. COLSON: No. He lives in New York.

20 THE COURT: He does. Okay. All right. Fantastic.

21 So what is your schedule in the next few weeks in
22 terms of meeting either remotely or in person with
23 Mr. Franzone?

24 MR. NICHOLAS: Good afternoon, your Honor. Easy to
25 do. Yeah, easy to do.

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1 THE COURT: Okay. So why don't we tentatively put
2 this matter over for two weeks, and in that time, I'll get the
3 *ex parte* submission. And Mr. Nicholas, hopefully you'll be
4 able to meet with Mr. Franzone and have the time you need to
5 speak with him to the extent that there are issues that you
6 could assist with, with the understanding that we'll come back.

7 In the meantime, we'll consult with the criminal
8 clerks office across the street about a CJA attorney who would
9 be able to try the case in June.

10 Let me ask, Ms. Colson, I think you mentioned that
11 Mr. Franzone has not been successful to date. Is it your
12 understanding that the search for retained counsel is still
13 continuing?

14 MS. COLSON: One moment, your Honor.

15 THE COURT: Sure. Go ahead.

16 (Counsel conferred with defendant)

17 MS. COLSON: Your Honor.

18 THE COURT: Yes.

19 MS. COLSON: Mr. Franzone does not have the resources
20 at the moment to retain counsel.

21 THE COURT: Okay. I just wanted to make sure that I
22 didn't have a CJA counsel come in and have another attorney
23 file a notice of appearance. Okay. All right.

24 Why don't we do that. And Ms. Fletcher, could I ask
25 for a response, and then I'll consider all the current motions

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1 fully briefed.

2 How long would you like to respond to the letter that
3 Mr. Silverman sent in?

4 MS. FLETCHER: Your Honor, could I have until next
5 Friday?

6 THE COURT: Sure. The government will have until next
7 Friday to file a response to the defense's January 5 letter,
8 and if we could come back on January 24 at noon, does that --
9 if the parties could check their calendars.

10 Does that work for the government?

11 MS. FLETCHER: Yes. That's fine. Thank you.

12 THE COURT: Ms. Colson.

13 MS. COLSON: Yes. That works. Thank you.

14 THE COURT: Let me ask Mr. Nicholas, does that work
15 for you?

16 MR. NICHOLAS: That's fine, your Honor. Thank you.

17 THE COURT: And obviously, Mr. Nicholas, I'll probably
18 end up relieving you at the time, but in the meantime, thank
19 you for taking on the representation.

20 MR. NICHOLAS: Of course. And I'm sorry about June,
21 your Honor.

22 THE COURT: Say that again?

23 MR. NICHOLAS: I'm sorry about June.

24 THE COURT: That's fine. It's understandable under
25 the circumstances.

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1 MR. NICHOLAS: Thank you.

2 Mr. Franzone, by my count, if I appoint new counsel,
3 that will be your fourth attorney.

4 The first though may have just been -- I don't know.
5 I'd have to look back because I think Ms. Gatto, Mr. Corozzo,
6 and then Ms. Colson. Ms. Gatto may have been -- and I'll check
7 this for purposes of an initial appearance here, although I'm
8 not entirely sure.

9 MS. FLETCHER: No, your Honor. She was counsel for
10 many months.

11 THE COURT: Okay. All right. The law is that you are
12 entitled to counsel, full stop, no matter what. But the law
13 also is that you're not entitled to a specific attorney. In
14 light of the history of this -- and obviously, I'll read
15 Ms. Colson and Mr. Silverman's submission, but in light of
16 that, the next counsel is the last counsel, absent something
17 extraordinary. That's why I intend to have that counsel
18 prepared, to have their, her, or his calendar open so that the
19 case could be tried in June.

20 I believe that there's sufficient time between now and
21 June for that attorney to get up to speed to try the case.

22 Let me ask, is there anything else that we need to do
23 today, from the government's perspective?

24 MS. FLETCHER: No, your Honor. Thank you.

25 THE COURT: Ms. Colson, Mr. Silverman.

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1 MS. COLSON: No. Thank you.

2 THE COURT: Thank you very much. Thank you,
3 Mr. Nicholas.

4 We'll stand adjourned, and I'll see everyone on
5 January 24th at noon.

6 MS. COLSON: Thank you.

7 (Adjourned)

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